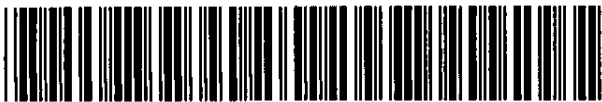
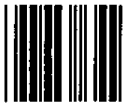
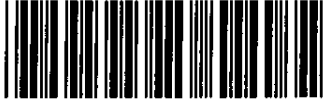


USDC SCAN INDEX SHEET



ACR 10/5/98 7:51

3:98-CV-01346 ZUBKIS V. SUMMIT FAMILY

7

AMDCMP.

1 Vladislav Steven Zubkis
2 4364 Bonita Road, Suite 476
3 Bonita, California 91902
4 (619) 475-2522
5 Unrepresented

FILED

98 OCT -2 PM 2:29

SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

8 **COURT OF THE UNITED STATES**

9 Vladislav Steven Zubkis
10 (alter ego of STELLA BELLA CORP.,USA)

Case No. 98-CV-1346-BTM (POR)

11 Plaintiff, in law
12 vs.

VERIFIED COMPLAINT FOR
DAMAGES-- FIRST AMENDED
COMPLAINT

13 SUMMIT FAMILY RESTAURANTS, INC.,
14 CKE RESTAURANTS, INC., PIPER
JAFFRAY COMPANIES, INC.,
Clark D. Jones,

Jury trial demanded

15 Defendants.

16 1. I, Vladislav Steven Zubkis, having first hand knowledge of the facts herein,
17 affirm under penalty of perjury that the following is true and correct to the best of my
18 knowledge:

19 **JURISDICTION**

20 2. This controversy falls under the authority of Article III Section 2 clause 1 of
21 the Constitution of the United States of America, between a citizen and citizen of
22 another State; Title 28 U.S.C. section 1332 and pendent jurisdiction. Pendent
23 jurisdiction, in the sense of judicial power, exists whenever there is a substantial federal
24 claim and the relationship between it and the asserted state claims permits the
25 conclusion that the entire action before the court comprises one "case." Mine Workers v.
26 Gibbs, 383 U.S. 715, 725. Pendent jurisdiction is a doctrine of discretion, justified by
27 judicial economy, convenience and fairness to litigants. p. 726.

28 //

- 7

ORIGINAL.

1 **PARTIES**

2 3. Vladislav Steven Zubkis, ("Zubkis"), an individual, lives in the city of Bonita,
3 California in San Diego County. Zubkis is the alter ego and Senior Financial Advisor of
4 Stella Bella Corporation, USA (SBUSA) and a major stockholder in the same.

5 4. SUMMIT FAMILY RESTAURANTS, INC., (hereinafter "SUMMIT"), is a
6 corporation chartered in the State of Delaware, and was formerly known as JB'S
7 RESTAURANTS INC.

8 5. CKE RESTAURANTS, INC., ("CKE"), is a corporation chartered in the State
9 of Delaware. On information and belief SUMMIT is owned by CKE but they are not
10 merged.

11 6. PIPER JAFFRAY COMPANIES, INC., ("PIPER JAFFRAY"), at all times
12 relevant to this complaint, was a corporation created under the laws of the State of
13 Minnesota. On information and belief, PIPER JAFFRAY was hired by SUMMIT to
14 negotiate the sale of SUMMIT.

15 7. Clark D. Jones, a citizen of Utah, at all times relevant to this complaint, on
16 information and belief, was Chairman of the Board and Chief Executive Officer of
17 SUMMIT, and was directly involved in at least one cause of action complained of
18 herein.

19 **FACTS**

20 8. On or about September 26, 1995 Zubkis became aware of the proposed
21 offering for sale of SUMMIT.

22 9. Representing SBUSA, Zubkis immediately commenced investigation into the
23 acquisition of SUMMIT and requested a full sales package from PIPER JAFFRAY and
24 an invitation to bid.

25 10. Between September, 1995 and July, 1996 Zubkis continued negotiations
26 with PIPER JAFFRAY regarding SBUSA's intent to purchase SUMMIT.

27 11. Throughout negotiations, with the assistance of Jack Broberg, who for 27
28 years was the founder and Chairman of the Board of JB's Restaurants (SUMMIT),

1 Zubkis acted in good faith to negotiate the purchase of SUMMIT by SBUSA.

2 12. On information and belief, PIPER JAFFRAY, Clark D. Jones and officers of
3 SUMMIT were aware that SBUSA intended to tender a bid for the purchase of
4 SUMMIT.

5 13. SBUSA planned to tender a bid of up to fifty million dollars (\$50,000,000),
6 of which forty million (\$40,000,000) was cash.

7 14. On or about July 25, 1996 CKE acquired SUMMIT for approximately
8 \$32,000,000.

9 15. Neither Zubkis nor SBUSA was ever given an opportunity to bid.

10 NOTICE OF LEGAL CLAIMS

11 "By analogy to interference with existing contractual relations, tort
12 liability has been imposed for intentional interference with prospective
13 economic advantage.

14 The chief difference lies in the recognition of more extensive
15 privileges on the part of defendants seeking to protect or advance their
16 interests, where the contract or advantage interfered with is merely
17 prospective. Chief among these are:

18 a. The privilege of bona fide competition for the prospective
19 advantage. The privilege is limited to methods which are regarded as
20 'fair,' and unfair competition which oversteps the boundaries of business
21 ethics recognized by the law usually has been held to lead to tort liability.
22 Interference by means of combinations seeking a monopolistic restraint of
23 trade is also actionable..." Prosser on Torts, p. 745.

24 CAUSES OF ACTION

25 16. **First cause of action:** Interference with prospective advantage. Plaintiff
26 incorporates herein, by reference, the preceding paragraphs of this complaint as though
27 fully set forth herein. Plaintiff alleges that Clark D. Jones and other officers of
28 SUMMIT, CKE, and PIPER JAFFRAY committed an unlawful conspiracy and an
unlawful boycott aimed at SBUSA to maliciously, wantonly and willfully interfere with
its participation in the bidding for purchase of SUMMIT, and tortiously prevented
Zubkis, alter ego of SBUSA, from being invited to the task desk. This interference
created loss to SBUSA and damaged Zubkis personally as a major stockholder and
senior financial advisor of SBUSA.

1 **17. Second cause of action:** Deceit. Plaintiff incorporates herein, by reference,
2 the preceding paragraphs of this complaint as though fully set forth herein. PIPER
3 JAFFRAY and officers of SUMMIT made Zubkis believe that he would be granted a
4 bona fide opportunity to bid, knowing that he would not.

5 18. For the first and second causes of action Plaintiff seeks (\$150,000.000)
6 prospective damages, for loss of income due to defendants' deceit and interference with
7 plaintiff's prospective advantage.

8 **19. Third cause of action:** Fraud. Plaintiff incorporates herein, by reference,
9 the preceding paragraphs of this complaint as though fully set forth herein. On
10 information and belief, SUMMIT appointed a Special Committee to evaluate proposals
11 for business combinations involving the transfer of substantial assets of SUMMIT. On
12 or about November 17, 1998, N. N. Haberman, Chairman of the Special Committee,
13 sent a letter to Zubkis in which he stated: "In my conversations with each of you on
14 Sunday, November 12, I expressed the Special Committee's willingness to consider
15 Stella Bella's offer as soon as you were able provide us with satisfactory evidence of
16 Stella Bella's ability to finance the transaction."

17 20. On or about Oct 28, 1995, Zubkis sent to the Special Committee a copy of a
18 letter of credit from the Bank of Nakhodka, in Nakhodka, Russia. The letter of credit
19 indicated the bank's consent to provide forty million United States dollars
20 (\$40,000,000.00) to SBUSA.

21 21. Plaintiff alleges that PIPER JAFFRAY and members of the Special
22 Committee never intended to allow SBUSA to bid, and that N. N. Habermann knew
23 when he communicated with Zubkis that SBUSA would not be permitted to bid. Zubkis
24 would not have expended time and energy, or made assurances to the directors and
25 stockholders of SBUSA, or sought financing for the purchase, if defendants had not
26 made him believe that SBUSA would have opportunity to bid on the purchase.

27 22. Defendants deceived Zubkis in order to provide the appearance of
28 legitimacy to the acquisition of SUMMIT by CKE. Zubkis did not know that

1 defendants had no intention to allow SBUSA to bid, and in good faith relied on the
2 statements and correspondence of defendants.

3 23. As a result of the actions of defendants as related herein Plaintiff suffered
4 great loss of reputation among stockholders and directors of SBUSA.

5 24. Plaintiff seeks five million dollars (\$5,000,000) punitive damages, for loss of
6 reputation due to fraud.

7 **ACTIONABLE FRAUD.** A false representation made with an intention
8 to deceive; may be committed by stating what is known to be false or by
9 professing knowledge of the truth of a statement which is false, but in
either case, the essential ingredient is a falsehood uttered with intent to
deceive. Sawyer v. Prickett, 19 Wall. 146, 22 L. Ed. 105.

10 25. **Fourth cause of action:** Conspiracy. Plaintiff incorporates herein, by
11 reference, the preceding paragraphs of this complaint as though fully set forth herein.
12 Plaintiff alleges that two or more defendants acted in concert with a single design for the
13 accomplishment of a common purpose, which was to prevent Zubkis, alter ego of
14 SBUSA, from purchasing SUMMIT. This resulted in a loss of the potential economic
15 advantage which was to be derived from the purchase of SUMMIT.

16 RELIEF REQUESTED

17 26. Through their actions described herein defendants have frustrated Zubkis'
18 attempts to negotiate the purchase of SUMMIT by SBUSA. Defendants' conduct has
19 caused Zubkis damage for which Zubkis should be compensated to the full extent
20 permitted by law.

21 27. WHEREFORE, given the outrageous nature of defendants' conduct, Zubkis
22 seeks:

23 28. Damages in an amount the jury deems appropriate, but in no event less than
24 \$155,000,000 (one hundred fifty five million dollars), and;

25 29. Costs of this suit.

26 Dated: October 1, 1998

27
28 Vladislav Steven Zubkis

DECLARATION OF SERVICE

I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the below-named person the following documents:

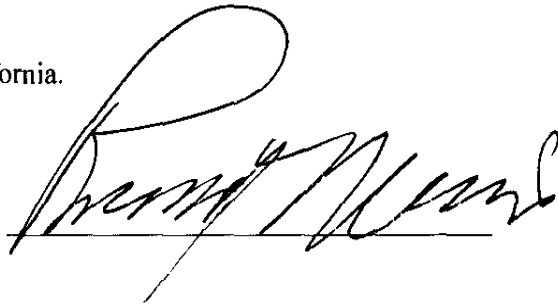
VERIFIED COMPLAINT FOR DAMAGES--FIRST AMENDED COMPLAINT

in the following manner: (check one)

- 1) ☐ By personally delivering copies to the person served.
- 2) ☐ By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 3) ☐ By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail postage prepaid) copies to the person served at the place where the copies were left.
- 4) ☒ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U. S. Mails at San Diego, California on October 2, 1998.

Thomas L. Vazakas
LEWIS, D'AMATO, BRISBOIS, & BISGAARD
550 West "C" Street, Suite 800
San Diego, CA 92101-3573

Executed on October 2, 1998 at San Diego, California.

A handwritten signature in black ink, appearing to read "Thomas L. Vazakas", written over a horizontal line.